

received, into hotchpot with the estate descended; but such child or children, or their issue, shall not be entitled to claim a share by descent, without bringing such advancement, or the value thereof as aforesaid, into the common stock or hotchpot, if there be another child or children unprovided for.

The right of the heirs to insist that property advanced be brought into hotchpot is a legal right and can not be defeated by the alienation of, or incumbrances placed upon, the property advanced, nor is such right defeated in equity as to the bringing of an advancement of personalty into hotchpot with real estate, by the insolvency of the personal estate of the ancestor. *Estate of Young*, 3 Md. Ch. 465.

The courts construe this section liberally to enforce the maxim that "equality is equity." A gift to a daughter or her husband is presumed to be an advancement in the absence of proof to the contrary. Proof held to show an advancement. *McCabe v. Brosenne*, 107 Md. 494; *Dilley v. Love*, 61 Md. 604; *Graves v. Spedden*, 46 Md. 527. Cf. *Justis v. Justis*, 99 Md. 80.

What constitutes an advancement? Proof thereof. Where an advancement is brought into hotchpot it is valued as of the time it was received and enjoyed. *Clark v. Willson*, 27 Md. 699. And see *Cecil v. Cecil*, 20 Md. 156; *Parks v. Parks*, 19 Md. 323; *Hayden v. Burch*, 9 Gill, 79; *Stewart v. State*, 2 H. & G. 114.

This section treats children who are heirs as co-parceners. *Gilpin v. Hollingsworth*, 3 Md. 194; *Hoffar v. Dement*, 5 Gill, 137. And see *Warfield v. Warfield*, 5 H. & J. 464; *Mitchell v. Gover*, 1 H. & J. 512; *Morris v. Harris*, 9 Gill, 26.

As to advancements, see also, art. 93, sec. 125.

Division and Election.

1904, art. 46, sec. 32. 1888, art. 46, sec. 32. 1860, art. 47, sec. 32. 1820, ch. 191, secs. 8, 13, 43, 45, 46, 47.

32. If the parties entitled to the intestate's estate cannot agree upon the division thereof, or if any person entitled to any part be a minor, an application may be made to the circuit court for the county where the estate lies, or if the land lies in different counties, to the circuit court for the county where the greater part of the land lies, or if the land lies in the city of Baltimore, then to the superior court or circuit court or circuit court No. 2 of said city; and the court shall appoint and issue a commission of five discreet, sensible men, to be commissioners, authorizing and empowering them, or a majority of them, to proceed in the premises according to the directions of this article, and in all respects conform to and comply with the provisions hereof; and the said commissioners, or a majority of them, before they proceed to act, shall severally take an oath (to be annexed to the said commission), before some justice of the peace for the county or city, or other person authorized to administer an oath, well and faithfully to perform the duties required of them by the commission, without favor, partiality or prejudice, and according to the best of their judgment and understanding.

What allegations are necessary to give the court jurisdiction under this section? Errors in procedure, though ground for a bill of review after decree, do not affect the jurisdiction. *Tomlinson v. McKaig*, 5 Gill, 275. And see *Roser v. Slade*, 3 Md. Ch. 91; *Hughes' Case*, 1 Bl. 46; *Chaney v. Tipton*, 11 G. & J. 255; *Hardy v. Summers*, 10 G. & J. 323; *Thompson v. Tolmie*, 2 Pet. 163.